

REMARKS

This preliminary amendment is being resubmitted to correct formatting of claims in the original preliminary amendment filed with the application January 23, 2004. No new matter is contained in the amendment.

By this preliminary amendment, claims 1-16, 19, and 20 are canceled, thus leaving claims 17 and 18 for examination on their merits. Claims 17 and 18 were canceled in the application no. 10/216,724 as being drawn to a different invention and submitted herewith for examination on their merits.

Secondly, the definition of activated carbon as an odor eliminating adsorbent has been inserted into the specification. Since a patent applicant need not include in the specification that which is known in the art, the addition of the known definition of activated carbon is not the introduction of new matter. See *Paperless Accounting, Inc. v. Bay Area Rapid Transit System*, 231 USPQ 649 (Fed. Cir. 1986).

Third, new claims 21-34 are submitted herewith. These claims parallel the claims submitted in parent application no. 10/216,724 that were subject to restriction. These claims also parallel those found in Applicant's issued patent no. 6,340,477 except that "odor eliminating adsorbent" is substituted for activated carbon. Applicant submits that new claims 21-34 are directed to a genus of the invention, and these claims are fully supported by the original disclosure, and such claims do not raise the issue of new matter.

MPEP 2163.05 clearly indicates that there may be situations where one species adequately supports a genus, and cites *In re Rasmussen*, 211 USPQ 323 (CCPA 1981) to support such a proposition. *In re Herschler*, 200 USPQ 711, (CCPA 1979), is also cited in this section of the manual for support of the proposition that one species may disclose a genus. In this case, a disclosure of corticosteroid in DMSO was found to be sufficient to support a method of using a mixture of a physiologically-active steroid in DMSO because "use of known chemical

compounds in a manner auxiliary to the invention must have a corresponding written description only so specific as to lead one of skill in the art to that class of compounds.

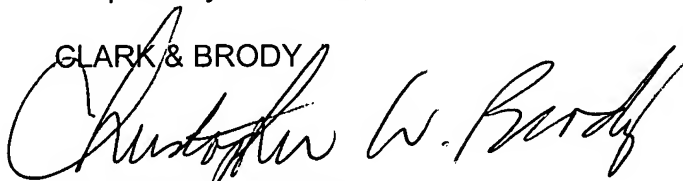
This section of the MPEP does caution that a genus requires a description of a reasonable number of specie when there is substantial variation within the genus. However, Applicant submits that the instant situation parallels that addressed in *Herschler*. Applicant's original disclosure of odor elimination by application of a spray containing activated carbon and the other applications using detergents, mouthwash, etc. with activated carbon is sufficient to lead one of skill in the art of odor elimination to recognize that Applicant has invented what is now claimed, i.e., an odor eliminating adsorbent for use with a liquid spray for application onto a hunter's skin or apparel, as well as the other applications now claimed. Further, Applicant is not claiming novelty or non-obviousness in the genus itself; Applicant's invention is based on the use of the adsorbent for odor elimination in hunting.

Entry of this amendment and an early examination on the merits is respectfully requested.

Please charge any fee deficiency or credit any overpayment to Deposit Account No. 50-1088.

Respectfully submitted,

CLARK & BRODY

A handwritten signature in black ink, appearing to read "Christopher W. Brody", written over the printed name and registration number.

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Docket No.: 70507-0005CD
Date: June 18, 2004